

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,
Plaintiff

V.

NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.,
Defendants

CIVIL ACTION NO. 05-101 ERIE

ELECTRONICALLY FILED

**SUPPLEMENTAL APPENDIX TO MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF DEFENDANTS NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY, INC.**

Defendants NORFOLK SOUTHERN CORPORATION and NORFOLK SOUTHERN RAILWAY COMPANY, INC., by their attorneys, MacDonald, Illig, Jones & Britton LLP, file this Supplemental Appendix to Motion for Summary Judgment on Behalf of Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company, Inc., pursuant to Rule 56(c) of the Federal Rules of Civil Procedure and LR 56.1.B.3 of the Local Civil Rules of the United States District Court for the Western District of Pennsylvania.

I hereby certify that this Appendix contains true and correct copies of the following pretrial discovery materials with respect to this case:

I. Deposition Transcripts

Tab O - Excerpts of Deposition of Robert B. Glenn (5/23/06)
Tab P - Excerpts of Deposition of David C. Morgan (5/23/06)
Tab Q - Excerpts of Deposition of Ervin L. Nixon (1/18/07)
Tab R - Excerpts of Deposition of Robin I. Nixon (3/24/06)
Tab S - Excerpts of Deposition of Timothy J. Price (5/23/06)
Tab T - Excerpts of Deposition of Robert E. Rockey (1/9/07)
Tab U - Excerpts of Deposition of Harvey H. Stone (1/9/07)

II. Deposition Exhibits

Tab V - H. Stone Deposition Exhibit 5 (1/9/07)

Respectfully submitted,

s/ Roger H. Taft

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Norfolk Southern Corporation and
Norfolk Southern Railway Company, Inc.

Tab O
Excerpts of Deposition of
Robert B. Glenn (5/23/06)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,

Plaintiff,

-vs-

NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.,

Defendants.

CIVIL ACTION
NO. 05-101 ERIE

DEPOSITION OF: ROBERT B. GLENN

DATE: May 23, 2006
Tuesday, 11:30 a.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 052306A

CERTIFIED COPY

1 observed as you were passing through the
2 intersection?

3 A. That is correct.

4 Q. You had no way of knowing whether or not, in
5 fact, the crossing lights and bells and the
6 gates were still operating when you were at
7 Amthor Steel?

8 A. No, sir; there's no way I could.

9 Q. Do you know what, if any, safety policy Norfolk
10 Southern had with respect to children being in
11 an area in a repeated manner?

12 A. None to my knowledge.

13 Q. And it's fair then you were never given any
14 training in that area?

15 A. No.

16 Q. Are there any other locations where you've
17 operated a train where the tracks and
18 residential street were in the same roadway?

19 A. No.

20 Q. Are you familiar with the term attractive
21 nuisance?

22 A. No, sir.

23 Q. As you traveled along West 19th Street, what was
24 your procedure for horns or whistles on the
25 train? Did you blow your horn or whistle or

Tab P
Excerpts of Deposition of
David C. Morgan (5/23/06)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,

Plaintiff,

-vs-

NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.,

Defendants.

CIVIL ACTION
NO. 05-101 ERIE

DEPOSITION OF: DAVID C. MORGAN

DATE: May 23, 2006
Tuesday, 9:45 a.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 052306

CERTIFIED COPY

1 their employment with subsequent name changes
2 since. I've been an assistant to the
3 trainmaster and assistant trainmaster both in
4 Williamson, West Virginia.

5 I went to Lorain, Ohio as an
6 assistant trainmaster in '76.

7 And then in 1977 I was promoted to
8 trainmaster in Conneaut, Ohio. And I left there
9 in 1997.

10 Q. What year was that that you were appointed
11 trainmaster?

12 A. '77. 1977.

13 Q. Okay. I'm sorry to interrupt you.

14 A. And I believe it was June of 1997 I went to
15 Lexington, Kentucky as trainmaster.

16 And January 2000 I went to my present
17 position as assistant terminal superintendent in
18 Bellevue, Ohio where I'm currently located.

19 Q. It sounds like a nice long career with one
20 employer so to speak.

21 A. Yes.

22 Q. Even though there was a merger that occurred I
23 understand.

24 As far as your civil engineering
25 degree goes, did you have any specialized

1 the roadway prior to this accident on many
2 occasions, did you ever observe whether or not
3 vehicles ever entered what I would call the
4 middle of the track area?

5 What would you term that area?

6 A. Yeah. When the train was not going through,
7 vehicles can cross the tracks at locations in
8 that area.

9 Q. Okay. And when they did that, would it be fair
10 to say that the tires on the vehicle did come in
11 contact with the railroad tracks?

12 A. That's correct.

13 Q. So it was possible that a car could actually
14 ride along with one or two of its tires actually
15 being in contact with the rail for a period of
16 time?

17 A. Sure.

18 Q. Okay. And getting back to the familiarity with
19 the territory, was there anything else that you
20 noted on your visits that you considered to be
21 significant or a safety issue that you thought
22 should be addressed?

23 A. No.

24 Q. Okay. And you don't recall ever seeing any
25 children playing alongside the tracks?

1 A. No, not playing in the street alongside the
2 tracks. I mean, no.

3 Q. What about areas not in the street? North and
4 south of the street?

5 A. Adjacent -- yes.

6 Q. What did you observe there?

7 A. Probably kids just walking. I'm just not -- I
8 mean, I can't pinpoint any specifics, but
9 people, adults, children.

10 Q. Okay. Do you recall ever having in place along
11 those tracks in that area between Raspberry and
12 State Street lookouts?

13 A. We did have crossing watchmen at different
14 streets.

15 Q. Tell me about that.

16 A. I believe it was during school hours. I mean,
17 during the school year for an eight-hour shift
18 we would have crossing watchmen that would get
19 out on the cross street area, and I can't recall
20 exactly what streets they were to be honest with
21 you, and stop traffic.

22 Q. Do you have any idea what years this would have
23 been?

24 A. No, I don't. I know when I first came there in
25 1977 they were in place. And I'm not sure if

1 your right-of-way.

2 A. That's correct.

3 Q. He would have had to be somewhere to the north
4 of your north rail.

5 A. That's correct.

6 Q. Do you have any idea how far north he was of the
7 north rail?

8 A. No.

9 Q. Had you ever in your whole career ever heard of
10 a child or a person grabbing onto a rail car in
11 the manner Robin Nixon did and being towed
12 along?

13 A. No.

14 Q. Never heard of that?

15 A. No.

16 Q. Would it surprise you that we have many
17 witnesses that lived in that area that are going
18 to testify that it was a daily occurrence on
19 those tracks?

20 A. That's -- I don't know. I mean, I'm just
21 telling you what I know.

22 Q. So that doesn't surprise you though, given that
23 you were there dozens of times to observe the
24 territory and the conditions?

25 A. Right. I'm just saying I never observed it.

1 Whether or not someone else did, I can't testify
2 to what they saw or did.

3 Q. Okay. And just to make sure I understood your
4 testimony, you said that you did discuss or you
5 did have discussions with crossing watchmen in
6 the years that you were trainmaster for that
7 area, but you never discussed any concerns about
8 children and safety along the tracks with them?

9 A. That's correct.

10 Q. Did you ever discuss with anybody concerns with
11 children and their safety when they were in the
12 areas adjacent to the track?

13 A. Not that I recall.

14 Q. Wouldn't that be one of your responsibilities as
15 a trainmaster?

16 A. I'm responsible for the operation of the trains
17 and engines. If people were laying on the
18 track, I mean, I've had people do that. But if
19 there was a problem that was brought to me, I
20 would certainly attempt to address it.

21 Q. I'm going to show you a document. It says it's
22 a Conrail Transaction. Norfolk Southern
23 Benefits, Safety, Environmental and Community
24 Benefits Prepared by Norfolk Southern
25 Corporation with a date of February 1998.

1 anything to prevent the accident?

2 A. No.

3 Q. Why?

4 A. I just don't believe the railroad could have
5 done anything. If he would have not trespassed
6 and grabbed our equipment as we went through,
7 then he would have not have gotten hurt.

8 Q. You said earlier that this was a unique
9 situation with a train running down the center
10 of a city street; correct?

11 A. Yeah. As far as I'm aware of during my places
12 I've been on the railroad during my career, yes.

13 Q. Are there any other places that were similar to
14 this that you've seen outside of Erie with a
15 similar situation?

16 A. No.

17 Q. Are you familiar with any safety precautions or
18 things that can be done on what -- I know that
19 Roger is going to object to me referring to it
20 as a shared roadway but --

21 MR. TAFT: I'm going to continue to
22 object. Why don't you just call it West 19th
23 Street because it is not a shared roadway and
24 he's testified to that.

25 BY MR. SOLYMOSI:

1 there's going to be a collision; right?

2 A. Right. So, I mean, the term shared roadway, I
3 mean, we have our right-of-way through there
4 that we use, and once we get through, then other
5 people can cross there, yes, if that's what you
6 mean.

7 Q. You'd agree that when we talk about the roadway,
8 we're talking about the area curb to curb that
9 contains a pathway for vehicles traveling west
10 -- and when I say vehicles, I mean autos or
11 bicycles --

12 A. Right.

13 Q. -- and vehicles and bicycles traveling east
14 adjacent to the tracks that are in the center of
15 the roadway; right?

16 A. Yeah.

17 Q. Okay. And you're telling me that it was
18 possible at the time for vehicular traffic to be
19 on that same roadway at the same time that the
20 train was traveling down the center of the
21 roadway on its right-of-way. Is that a fair
22 statement?

23 A. You're going to have to repeat that one again.

24 Q. You told me earlier that it was possible for
25 vehicles to be traveling on the roadway on West

1 19th Street at the same time a train was
2 traveling on West 19th Street.

3 A. Oh; that is correct, as a train is traveling on
4 the right-of-way, a vehicle can go beyond the
5 north side and on the south side.

6 Q. Okay. And you're aware of that being possible
7 at the time and prior to this accident.

8 A. Yes.

9 Q. Okay. But is it fair to say that you're not
10 aware of any safety policies concerning
11 situations such as that where cars or bicycles
12 can travel parallel to the tracks on a roadway
13 that is utilized by both the train and
14 automobiles or bicycles?

15 A. That's correct.

16 Q. You're not aware of any safety program or
17 policies or --

18 A. No.

19 Q. -- designed criteria for a situation like that?

20 A. No.

21 Q. And you're not aware of any studies that the
22 railroad may have undertaken in that regard?

23 A. That's correct.

24 Q. Are you aware of any studies that the railroad
25 undertook related to the removal of those

1 A. No.

2 Q. How often do you look at the six tenets of
3 safety?

4 A. The booklet? Not very often.

5 Q. In here it says that all exposures can be
6 safeguarded.

7 Is it your testimony today that you
8 don't believe that there's anything you could
9 have done with regard to the safety in
10 preventing children from coming in contact with
11 railway cars on West 19th Street?

12 Is it your position that that
13 exposure cannot be safeguarded for?

14 A. Maybe if the city just closed off the street and
15 put fences around and put guards around and
16 allowed nobody in, then maybe. I mean, there's
17 always sometimes exorbitant ways, out-of-the-box
18 ways, but, no, under normal circumstances, no.

19 Q. Well, you did have in place some crossing
20 watchmen for quite a number of years; isn't that
21 correct?

22 A. That's correct.

23 Q. And would you agree with me that during that
24 period of time you're not aware of any child
25 tagging along the railroad train and being

1 injured as a result of that?

2 A. That's correct.

3 Q. So do you think that your crossing watchmen may
4 have had a positive effect in that regard when
5 they were in place?

6 A. I don't know. I didn't really think the
7 crossing watchmen were needed because we had, at
8 least during the time I was there, we had
9 flashers at the crossings, but for some reason
10 they were there.

11 Q. Is it your position that the railroad has no
12 responsibility for safety between the crossings
13 on the portion of the roadway between the
14 intersections?

15 A. What do you mean for safety? I mean, I'm
16 responsible -- we are responsible to make sure
17 that we maintain a safe roadbed and we run safe
18 equipment and our employees are properly
19 trained.

20 Q. Are you familiar with the term attractive
21 nuisance?

22 A. I have heard the term in the past.

23 Q. What do you know about the term?

24 A. Just that some people allege that just by a
25 railroad being a railroad you have people that

1 are attracted to watch it and look at it and
2 that kind of stuff. Maybe you got railroad
3 buffs.

4 Q. What about with regard to children? Do you
5 understand that sometimes children are attracted
6 to railways and locomotives and cars?

7 A. Sure. Children, adults, yeah.

8 Q. What kind of training have you had in that
9 regard during all the years you've been with the
10 railroad?

11 A. Nothing specific, other than, as I told you
12 before, if there's any trespassers, we would
13 notify the local authorities.

14 Q. Would it be fair to say then that you did
15 nothing in the time that you were a trainmaster
16 to try to prevent such accidents as occurred to
17 Mr. Nixon?

18 A. That's correct. That's the first accident of
19 that type that even occurred.

20 Q. Do you know why the tracks were laid in the
21 middle of 19th Street?

22 A. I don't know if the tracks were there first and
23 the street was there second or the street was
24 there first and the tracks were there second. I
25 don't know the history behind it.

1 Q. Will you admit that this is a dangerous type of
2 operation when trains run in the center of a
3 street at low speed?

4 MR. TAFT: Objection to form. Define
5 dangerous.

6 BY MR. SOLYMOSI:

7 Q. Well, would you consider the conditions as you
8 knew them to be on West 19th Street with the --
9 like we talked about earlier, with the vehicles
10 other than the trains being able to travel
11 alongside the train even when the train was
12 running, including people on bicycles, would you
13 consider that to be a dangerous situation?

14 A. As long as everyone complied with the law, the
15 railroad, as well as any individuals, then, yes,
16 it is a safe operation.

17 Q. Do you have any children?

18 A. Yes, I do.

19 Q. Do you think that young children are capable of
20 always observing the rules?

21 A. No. Just like adults aren't always capable of
22 observing the rules.

23 Q. Do you think that a child is as capable as an
24 adult when it comes to understanding the dangers
25 alongside a railway?

1 A. Some children are. My children have been
2 exposed to railroads that they may be more aware
3 of the dangers than other kids, but it is up to
4 the parents to supervise their children. I
5 mean, that's the way it is.

6 Q. So do you agree or disagree that that situation
7 was dangerous or not for pedestrians or cars?

8 A. No. If everyone obeyed the law, there were no
9 dangers.

10 Q. And is that why you didn't undertake any efforts
11 to make sure that children would not be near the
12 train while the train was going by?

13 A. That's correct.

14 Q. Is it because you assume that if people follow
15 the rules, it wouldn't be dangerous?

16 A. Well, you have to assume that people will obey
17 the law, just like I have to assume that a train
18 will stop for a stop signal or a car will stop
19 for a stop signal.

20 Q. Then would it be correct that you don't believe
21 the railroad needs to do anything to try to
22 prevent this type of an accident from happening?

23 A. I really can't answer that.

24 Q. Why not?

25 A. I mean, I -- we --

1 Q. Do you understand the question?

2 A. Say that again.

3 MR. SOLYMOSI: Read it back, Toni.

4 THE WITNESS: Yeah, read it back to
5 me.

6 - - - -

7 (The record was read back by the Reporter.)

8 - - - -

9 A. Well, the railroad does -- we have Operation
10 Lifesaver programs and we have people that go
11 out to schools, local communities, talk about
12 the dangers of trespassing on railroad property.
13 And I'm sure there was probably something on TV
14 in the area. There is an educational campaign.
15 And that's a way for the railroad to get
16 information out to the public to say, hey, you
17 know, I mean, obey the law or you could get
18 hurt.

19 BY MR. SOLYMOSI:

20 Q. So do you know what steps were taken in that
21 regard for this particular area and this
22 particular condition that we've been talking
23 about?

24 A. Specifically, no.

25 Q. And you agree you didn't do anything about it.

1 A. That's correct.

2 Q. Who's in charge of this Operation Lifesaver in
3 your company?

4 A. Operation Lifesaver -- we have a coordinator for
5 the State of Ohio for all railroads out of
6 Columbus, and then there's different volunteers
7 within all the railroads, whether it be Norfolk
8 Southern CSX that are trained to go out to
9 schools and trucking companies and so forth and
10 give presentations.

11 Q. And this is part of that Operation Lifesaver you
12 were talking about?

13 A. That's correct.

14 Q. Have you ever been at any presentations for
15 Operation Lifesaver?

16 A. Yes.

17 Q. What and where if you can remember?

18 A. Oh, I've been to a trucking company in Fairview,
19 Ohio -- or Fairview, Pennsylvania.

20 Q. What trucking company?

21 A. I do not recall. I don't even remember it was
22 so many years ago.

23 Q. Okay.

24 A. I've been in Conneaut High School driving class.

25 Q. Driving class?

1 A. Yeah, driver's ed.

2 Q. Okay.

3 A. Maybe I've been in some others, but I just don't
4 recall.

5 Q. Have you ever been to any that would have
6 addressed the safety issue of kids on bicycles
7 where there's a paved roadway that's adjacent to
8 the tracks?

9 A. No.

10 Q. And you've never participated as a presenter in
11 Operation Lifesaver, have you?

12 A. Yes.

13 Q. Oh.

14 A. At the driver's education and at this trucking
15 company.

16 Q. Oh, okay, I didn't realize that you were
17 actually presenting.

18 A. Yes.

19 Q. Okay. And did you have any written materials or
20 anything that you gave out?

21 A. Yeah, Operation Lifesaver materials.

22 Q. That's not something that Norfolk Southern
23 produces?

24 A. No.

25 Q. Operation Lifesaver, is it an independent

1 organization? Do you understand who they are?

2 A. It's been a while since I've been involved with
3 it, but I guess the railroads contribute to this
4 organization, this Operation Lifesaver,
5 Incorporated. And then they do the education,
6 the training, and so forth.

7 Q. Did you ever have any contact with the City of
8 Erie Police Department in the time that you were
9 trainmaster prior to this accident?

10 A. Probably at other crossing accidents.

11 Q. Other than that, would it be fair to say that
12 you never contacted them to address any concerns
13 there might be with safety and children along
14 the 19th Street tracks?

15 A. That's correct.

16 - - - -

17 (There was a discussion off the record.)

18 - - - -

19 BY MR. SOLYMOSI:

20 Q. I'm going to mark this as Exhibit 2 to your
21 deposition. Could you identify that document?

22 - - - -

23 (The witness reviewed the document.)

24 - - - -

25 A. Yes, I can. It's a report that I completed.

Tab Q
Excerpts of Deposition of
Ervin L. Nixon (1/18/07)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA
3

4 - - -
5 ROBIN NIXON,)
6 Plaintiff,)
7 vs.) CIVIL ACTION
8) No. 05-101 ERIE
9)
10 NORFOLK SOUTHERN CORPORATION)
and NORFOLK SOUTHERN RAILWAY)
COMPANY, INC.,)
Defendants.)

11 - - -
12 Deposition of ERVIN LEE NIXON, SR.
13 Thursday, January 18, 2007
14

15 - - -
16 The deposition of ERVIN LEE NIXON, SR., called
17 as a witness by the defendants, pursuant to notice and
18 the Federal Rules of Civil Procedure pertaining to the
19 taking of depositions, taken before me, the
20 undersigned, Karen Burkett, a Notary Public in and
for the Commonwealth of Pennsylvania, at the offices
of MacDonald, Illig, Jones & Britton, L.L.P.
100 State Street, Suite 700, Erie, Pennsylvania
16507, commencing at 9:30 o'clock a.m., the day and
date above set forth.

21 - - -
22 COMPUTER-AIDED TRANSCRIPTION BY
23 MORSE, GANTVERG & HODGE, INC.
PITTSBURGH, PENNSYLVANIA
412-281-0189
24 - - -
25

ORIGINAL

1 The accident occurred on April 27th, 1997.
2 Were these two prior instances where Robin visited
3 Chris on West 21st Street during the year 1997?

4 A Yes.

5 Q Do you know if they were the same month?

6 A No recollection.

7 Q Okay. On each of those two prior
8 occasions, did Robin ask for your permission to visit
9 Chris at his house?

10 A He always asks for my permission.

11 Q When Robin asked for your permission on
12 April 27th, 1997, did you place any restrictions on
13 what he was allowed to do that day

14 A He wasn't supposed to go past
15 21st Street.

16 Q When you say "go past," you mean go north?

17 A Below.

18 Q Okay. And again, so we're clear, when you
19 say "below," in the city of Erie the streets --

20 A Would be headed north.

21 Q Headed north. Because the streets go from
22 high numbers like 21st to the north, to the low
23 numbers along the bay and the lake; is that correct?

24 A Yes.

25 Q Do you recall what you specifically told

1 Chris the morning of April 27th, 1997 about not going
2 below or north of West 21st Street?

3 A I didn't tell Chris anything.

4 Q I'm sorry. Do you recall what you
5 specifically told Robin the morning of the accident
6 about not going below or north of West 21st Street?

7 A Just not to go.

8 Q And why was that?

9 A My own personal reasons? I was afraid of
10 the traffic and the railroad.

11 Q Have you resided in the city of Erie all or
12 most of your life?

13 A Most of my life.

14 Q So you were familiar with the fact that
15 there was a single set of Norfolk Southern tracks that
16 ran east and west through West 19th Street in the city
17 of Erie?

18 A Very familiar.

19 Q And you were aware that there was a city
20 street on both sides which there could be traffic --

21 A Yes.

22 Q -- or that sort of thing?

23 Why did you think that it might be
24 dangerous for your son, Robin, to go north of
25 21st Street in the vicinity of West 19th Street and

1 the Norfolk Southern tracks?

2 A Because of traffic and news reports of
3 children being hit by cars and buses.

4 Q When you had this discussion with Robin on
5 the morning of April 27th, 1997, did you give him any
6 specific reasons as to why you did not want him to go
7 below or north of West 21st Street?

8 A No, I didn't.

9 Q You testified a bit earlier that there
10 were two prior occasions in 1997 that you also gave
11 Robin permission to go to Chris Houston's house on
12 21st Street?

13 A Yes.

14 Q On both of those occasions -- I will put it
15 this way: On either of those occasions, did you give
16 any instructions or place any restrictions on Robin in
17 visiting Chris Houston?

18 A I took him down there and gave him the same
19 instructions, "Don't go below 21st Street."

20 Q When you say you took him down there, you
21 are referring to Robin, of course?

22 A Yes.

23 Q How did you take Robin down to
24 West 21st Street?

25 A I rode him on his bike.

1 Q In other words, both of you riding on the
2 bike and, what, him behind?

3 A No, him on the crossbar.

4 Q Okay. When you took your son, Robin, to
5 West 21st Street with you in the bicycle seat and him
6 on the crossbar, did you go down for the purpose of
7 showing him specifically where he was allowed to be,
8 and where he was not allowed to be?

9 A No, I just took him to Chris's house.

10 Q When you got him to Chris's house, did you
11 give him instructions that you did not want him to go
12 north or below 21st Street?

13 A Yes.

14 Q Did you tell him why it was?

15 A Yes.

16 Q What did you tell him?

17 A I told him there was too much traffic, and
18 I was afraid of him getting hurt.

19 Q Did you say anything to him at the time
20 about the railroad tracks?

21 A I showed him where they were, and I told
22 him not to go across them.

23 Q Did you tell him to stay away from the
24 railroad tracks?

25 A I thought that was evident when I said,

1 "Don't go that way."

2 Q You just described the first time that
3 Robin went to Chris's house where you took him down
4 there, showed him the street, and gave him those
5 instructions.

6 A Yes.

7 Q The second time that he went to Chris's
8 house, when he asked for your permission again, and
9 you said you gave him the same instructions?

10 A Yes.

11 Q "Don't go below 21st Street or north of
12 21st Street"? Did you go down to Mr. Houston's house
13 again with Robin?

14 A Yes.

15 Q So the second time, did you again ride his
16 bicycle down with your son, Robin, on the crossbar?

17 A No, that time we walked.

18 Q And that second time when you got down to
19 Chris Houston's house on 21st Street, did you again
20 impress upon Robin, "You are not to go north or below
21 21st Street"?

22 A Yes.

23 Q Did you essentially tell him the same thing
24 about traffic and about staying away from the railroad
25 tracks?

1 A Yes.

2 Q Directing your attention back to the
3 morning of the accident. So this would be the third
4 time where Robin asked if he could go to Chris's house
5 am I correct in understanding that you did not go with
6 him this particular occasion?

7 A You are correct.

8 Q But before Robin left the house, did you
9 again give him those same instructions, "You are not
10 to go below or north of 21st Street," and he was to
11 stay away from the railroad tracks?

12 A I just said, "Remember what I told you?"
13 And he said he did.

14 Q Again, what you had told him was, "Don't go
15 north of 21st Street, and stay away from the railroad
16 tracks"?

17 A That is correct.

18 Q And his response is, "I know that. I
19 remember that"?

20 A Yes.

21 Q Mr. Nixon, how did you first learn of your
22 son's accident on April 27th, 1997?

23 A Telephone call from a surgeon at
24 Saint Vincent. I think he was an Indian doctor.

25 Q You don't recall his name at this time?

Errata Sheet

Deposition Of:

Date: _____

[illegible]

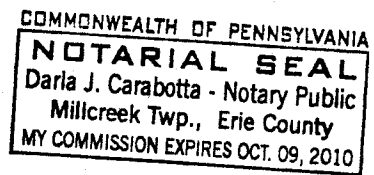
SIGNATURE PAGE

Ervin Lee Nixon, Sr.
Ervin Lee Nixon, Sr.

Subscribed and sworn to before me this

26 day of February, 2007

Daria J. Carabotta
Notary Public



Tab R
Excerpts of Deposition of
Robin L. Nixon (3/24/06)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 ROBIN NIXON,)
5 Plaintiff,)
6 vs.) No. 05-101ERIE
7 NORFOLK SOUTHERN CORPORATION and)
8 NORFOLK SOUTHERN RAILWAY COMPANY,)
9 INC.,)
Defendants.)

10 - - -

11 Deposition of ROBIN NIXON
12 Friday, March 24, 2006

13 - - -

14 The deposition of ROBIN NIXON, the plaintiff
15 herein, called as a witness by the defendants,
16 pursuant to notice and the Federal Rules of Civil
17 Procedure pertaining to the taking of depositions,
18 taken before me, the undersigned, Lance E. Hannaford,
19 a Notary Public in and for the Commonwealth of
Pennsylvania, at the offices of MacDonald Illig Jones
& Britton, 100 State Street, Suite 700, Erie,
Pennsylvania 16507, commencing at 9:35 o'clock a.m.,
the day and date above set forth.

20 - - -
21 COMPUTER-AIDED TRANSCRIPTION BY
22 MORSE, GANTVERG & HODGE, INC.
23 PITTSBURGH, PENNSYLVANIA
24 412-281-0189
25 - - -

1 A Hand brakes.

2 Q That helps.

3 As you were being pulled along, holding on
4 to the handle with your right hand, left hand on the
5 left handlebar of your bike, where was Mr. Houston?

6 A In front of me.

7 Q Was he riding his bike in front of you? Or
8 was he also holding on to the train?

9 A He was also holding on to the train.

10 Q When did Mr. Houston first grab on to the
11 train?

12 A Right before me.

13 Q Now, you were holding on to a handle near
14 the rear of one of these rail cars.

15 Correct?

16 A Correct.

17 Q What was Mr. Houston holding on to?

18 A I am not sure.

19 Because he was two cars ahead of me.

20 So I couldn't exactly see what he was
21 holding on to.

22 Q He was, to your best recollection, two rail
23 cars farther toward the head end or front end of the
24 train than you were?

25 A Correct.

Tab S
Excerpts of Deposition of
Timothy J. Price (5/23/06)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,

Plaintiff,

-vs-

NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.,

Defendants.

CIVIL ACTION
NO. 05-101 ERIE

DEPOSITION OF: TIMOTHY J. PRICE

DATE: May 23, 2006
Tuesday, 12:45 p.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 052306B

CERTIFIED COPY

1 Q. Are you aware of any Norfolk Southern safety
2 policy that would apply to children that are
3 repeatedly found in an area adjacent to your
4 railway as you're traveling through the area?

5 A. No.

6 Q. So it would be fair to say you were never given
7 any training in that regard?

8 A. That's correct.

9 Q. Have you ever operated a train in a similar
10 location where the tracks were on a residential
11 street?

12 MR. TAFT: Object to form.

13 Go ahead. You can answer it if
14 you're able to.

15 A. Repeat that one more time.

16 BY MR. SOLYMOSI:

17 Q. Are there any other locations on which you
18 operated a train that were similar to the
19 conditions on West 19th Street between State and
20 Cranberry?

21 A. No.

22 Q. Are you familiar with the term attractive
23 nuisance?

24 A. No.

25 Q. Do you have regular safety meetings?

Tab T
Excerpts of Deposition of
Robert E. Rockey (1/9/07)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,

Plaintiff,

-vs-

NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.

Defendants.

Civil Action
No. 05-101 ERIE

DEPOSITION OF: ROBERT E. ROCKEY

DATE: January 9, 2007
Tuesday, 2:40 p.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 010907B

CERTIFIED COPY

1 A. I don't have any.

2 Q. You don't have anything?

3 A. Nothing. I've been retired for -- I haven't
4 worked that job in several years and I've been
5 retired for a couple also, so I really don't
6 have any paperwork.

7 Q. That's fine. Could you tell me when you were
8 first employed by Norfolk Southern?

9 A. Yes. December 1st, 1969. November or December
10 1st, I don't remember.

11 Q. That's close enough.

12 A. Okay.

13 Q. What position were you hired for?

14 A. I was a route clerk.

15 Q. A route clerk? What does that mean?

16 A. I would route cars from one designation to
17 another.

18 Q. How long did you perform that job?

19 A. Until April 1970.

20 Q. Do you recall what position you moved to after
21 that?

22 A. I went into the crossings and worked that for a
23 few months, and then worked on B&B, which is
24 called bridge and building. We worked on the
25 bridges, and carpentry work on the buildings and

1 stuff for a while. They terminated that job.
2 Then they terminated the route clerk's job also
3 and they computerized it; that's why I left it.
4 And I was the youngest clerk, so then again I
5 was the youngest man on the B&B, and I went back
6 and forth. I held a position on both rosters,
7 so if work would slow down in one, I would jump
8 into the other one. I worked that until 1983.

9 Q. And then what happened in '83?

10 A. '83 they eliminated the crossing watchmen, all
11 except for the three ground crossings.

12 Q. When you say they eliminated, do you mean the
13 towers?

14 A. Yeah. They put the new motion sensors in and
15 updated all the facilities, so they really
16 didn't need crossing guards or tower people
17 anymore.

18 Q. And you said that there were three ground
19 locations for cross watchmen?

20 A. That's correct.

21 Q. Do you recall where they were located?

22 A. Yes. One was at Cherry, one was at Cascade
23 Street, and one was at Raspberry Street.

24 Q. Did you ever work any of those locations on the
25 ground after 1983?

1 A. Yes, I did.

2 Q. How long did you do that for?

3 A. In 1987 -- I worked as an extra man out there
4 '83, '84, '85 and '86, and I sold real estate at
5 the same time.

6 Q. When you say you worked as an extra man, would
7 that have been a part-time position?

8 A. Yes. What would happen is I would work the
9 vacation schedules. And the guys were pretty
10 good about it. I was selling real estate and
11 they were making sure I'd get enough time in.
12 So you only had to work once every 120 days to
13 get your insurance. So one of them would take a
14 vacation day or something so I could pick up the
15 insurance.

16 Q. So you were really really part-time in '83 to
17 '86.

18 A. Absolutely. Yes.

19 Q. Okay.

20 A. In '87 I came out on the track department. Or
21 was it '86? It's been so long I don't remember.

22 Q. That's all right. I'm not going to hold you to
23 it. Just if you can give me your best
24 recollection.

25 A. I came out and we worked -- as a matter of fact,

1 We would load the boats. We were at Ontario
2 Hydro.

3 Q. So that was the end of your days as a cross
4 watchman.

5 A. That's correct. I did that for three years and
6 then retired.

7 Q. In the period of time that you worked in the
8 towers, did you ever observe any children
9 playing in the street area of the tracks, in the
10 West 19th Street portion of the tracks where the
11 tracks go down the middle of 19th Street?

12 A. From time to time you would see children, but
13 not -- you know, it wasn't a regular thing.
14 Most people would not allow their kids to be on
15 tracks to be honest with you, you know.

16 Q. Well, sure.

17 A. Any responsible parent wouldn't allow their
18 children to be there.

19 Q. Of course not.

20 A. So usually you did not.

21 Q. Right. But we all know -- we were kids and our
22 parents didn't always know where you're at;
23 right?

24 A. Yeah, I guess.

25 Q. So tell me about what you observed with regard

1 to children on the street or track area of West
2 19th Street.

3 A. Well, West 19th Street wasn't as heavily
4 populated as the other streets in the area.
5 There was only housing on one side. You had the
6 cemetery there and you had industry. When I
7 first started working there it was all industry.
8 There was just a few places where there was just
9 a few houses there. So it really wasn't -- the
10 kids would -- usually they would be going maybe
11 across the tracks to go somewhere else, but they
12 didn't normally play on 19th Street, you know.

13 Q. Did you ever see any kids riding their bikes
14 along 19th Street?

15 A. I'm sure I did, you know. They probably were
16 riding along, yeah. Probably, yeah.

17 Q. Did you ever see them riding along while trains
18 were traversing 19th Street?

19 A. Normally didn't. Normally you didn't, you know.
20 People, like I say, people generally stay clear
21 of trains, you know.

22 Q. You say normally though. So were there times
23 that maybe you saw someone --

24 A. Riding a bike? Sure.

25 Q. -- a child on a bike maybe closer to the train

1 than they should be?

2 A. Oh, there were times when I was in the ground
3 crossings and stuff and I'd tell them, you know,
4 this is not --

5 There were signs there, you know.

6 Q. There were?

7 A. Yeah, there were signs there.

8 Q. What did the signs say?

9 A. That it belonged by Norfolk Southern. At the
10 center, you know, where the track was itself was
11 belonged by Norfolk Southern, and there were
12 signs telling people that --

13 Q. Do you know what the sign said?

14 A. I can't remember now it's been so many years.

15 Q. You said that you were aware of what was in the
16 area. Were you aware that there was a
17 playground located on the south side of 19th
18 Street somewhere, a block or two west of Sass?

19 A. Let me think. I remember there was something
20 there, but there was never anybody there in that
21 area right there. I think there was at one time
22 a swing set or something over there.

23 Q. There was a little playground and a basketball
24 court.

25 A. Okay. Yeah. But I was never in that area right

1 A. Yeah.

2 Q. Jim Baskin?

3 A. Yeah.

4 Q. Mark Allen?

5 A. That's correct.

6 Q. Any others that you can think of?

7 A. Not really. Jim Gruey.

8 Q. Jim Gruey? How do you spell that?

9 A. He's deceased now.

10 Q. Oh, okay.

11 A. That's about all I can remember. Yeah, Jim
12 Gruey. Probably those five. That's probably
13 it.

14 Q. How about other cross watchmen?

15 A. There was a kid behind us by the name of Furman.
16 A guy by the name of Furman from New York.

17 Q. Do you know where he's at now?

18 A. Don Gray and Elmer Rundel are both dead now.
19 They're both deceased. I think pretty much
20 they're all gone now. I think that guy and
21 myself are about the only ones left.

22 Q. Did you ever see any kids actually ride their
23 bikes and ride up alongside the train as it was
24 going down the tracks and grab on and get towed
25 by the train?

1 A. I probably seen everything in the years that
2 I've been there, and I probably saw that a
3 couple of times.

4 Q. Yeah?

5 A. Yeah. Maybe once or twice I saw kids doing
6 that. Yes, I can say that.

7 Q. Were you able to do anything about it?

8 A. I pulled a kid away from it once; I remember
9 that. I think I yelled at a kid that was doing
10 it and he got away from it.

11 Q. Did you ever report that to any of your
12 supervisors or --

13 A. Well, they -- I'm sure that they, you know --

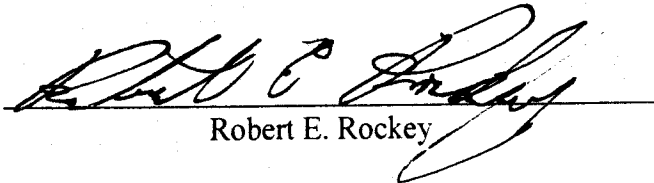
14 No, I don't think I ever did, to be
15 honest with you. Supervision was more, you
16 know, they were -- there wasn't a supervisor in
17 this area for one thing. It was our job to do
18 that, you know. You don't have a kid's name or
19 something else, you know, there's nothing you
20 can do about it. If someone did do something
21 and you got his name or something, then you
22 would report that to a supervisor.

23 Q. I see. Do you know or can you remember whether
24 or not anyone ever instructed you to watch for
25 any unsafe activities regarding children along

DEPOSITION OF ROBERT E. ROCKEY
ERRATA SHEET
JANUARY 9, 2007

<u>Page/Line</u>	<u>Change From</u>	<u>Change To</u>	<u>Reason for Change</u>
5/14	route clerk	rate clerk	Transcription error
5/15	designation	destination	Transcription error
11/1-2	We would load the boats. We were at Ontario Hydro.	We would load the boats for Ontario Hydro.	Transcription error

In all other respects, I believe that the transcript is true and correct.


Robert E. Rockey

Dated: March 5, 2007

Tab U
Excerpts of Deposition of
Harvey H. Stone (1/9/07)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,)
)
Plaintiff,)
)
-vs-) Civil Action
) No. 05-101 ERIE
NORFOLK SOUTHERN CORPORATION)
and NORFOLK SOUTHERN RAILWAY)
COMPANY, INC.)
)
Defendants.)

DEPOSITION OF: HARVEY H. STONE

DATE: January 9, 2007
Tuesday, 11:10 a.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 010907

CERTIFIED COPY

1 to take over the Conrail system. That was the
2 beginning of the project. Later on when Norfolk
3 Southern and CSX made their deal to do a joint
4 takeover, then we were there to support Norfolk
5 Southern's issues and again get the support of
6 the community to allow more trains to use the
7 corridor until it could be replaced.

8 Q. So was that one of the major issues then that in
9 order to have the tracks be --

10 Well, when you say replaced, do you
11 mean taken out or moved?

12 A. The original proposal was to move the Norfolk
13 Southern operation over to 14th Street, which
14 was the Conrail corridor.

15 Q. Oh, I see. I see. So, I mean, I noticed in
16 your file that there was a lot of talk about the
17 increase in traffic.

18 A. Yes.

19 Q. And I wasn't sure if the increase in traffic
20 related to increasing traffic on 19th Street in
21 order to do whatever changes may have to happen
22 on 14th Street.

23 A. No.

24 Q. That's not correct?

25 A. That had to do with adding Conrail service to

1 the Norfolk Southern line. If Norfolk Southern
2 was successful in achieving the takeover, they
3 would be operating more trains. They would be
4 operating a bunch of Conrail trains that were
5 formerly operated by Conrail.

6 Q. On 19th Street?

7 A. Yes. And in order to do that they would have
8 increased the traffic on 19th Street.

9 Q. I guess that's where I think I just confused the
10 record when I inserted that 19th Street.

11 So to make sure I understand you, the
12 concern was that if Norfolk Southern was able to
13 acquire Conrail, that there was going to be an
14 increase in traffic on 19th Street?

15 A. No.

16 Q. Okay. Then why don't you say it again.

17 A. If Norfolk Southern was going to be able to
18 acquire Conrail, they were proposing to move
19 their operations to the 14th Street corridor,
20 which was owned by Conrail.

21 Later on in the process when it
22 became a joint takeover, CSX and Norfolk
23 Southern did a joint takeover of Conrail, CSX
24 was going to wind up with the 14th Street
25 corridor. Norfolk Southern still had the 19th

1 major bottleneck on their system. You could
2 only travel that 6 miles at 10 miles an hour,
3 and that was a major issue. That and the fact
4 that there were some place between 11 and 19
5 at-grade crossings in downtown Erie. So that
6 was the issue that there were these at-grade
7 crossings and the slow speed limits.

8 Q. Were you ever aware that Norfolk Southern had
9 cross watchmen located along the West 19th
10 Street tracks prior to Mr. Nixon's accident?

11 A. Yes.

12 Q. What did you know about the cross watchmen?

13 A. Well, there were two different times when that
14 was in place. Initially there were towers that
15 had watchmen that controlled the traffic on the
16 19th Street corridor. The rail corridor. When
17 those towers were taken down, then there were
18 watchmen at several school crossings whenever
19 there was school in session on 19th Street.

20 Q. That was only when there was school in session?

21 A. As far as I know that's when they were.

22 Q. Did you ever have any discussions with anyone
23 from Norfolk Southern about the cross watchmen?

24 A. No.

25 Q. Were you aware that there was some type of an

1 order signed by I think it was a Pennsylvania
2 state agency -- I think it's decree nisi -- that
3 allowed for some changes or some action along
4 West 19th Street tracks but it provided that the
5 cross watchmen were to remain? Are you familiar
6 with that?

7 A. Yes, I'm familiar with that.

8 Q. What can you tell me about that?

9 A. That was when those towers were taken down. The
10 order that I remember was that the towers could
11 be taken down, but the railroad would have to
12 provide watchmen during school hours at three
13 specific crossings.

14 Q. Do you know any of the circumstances or facts
15 involved in the removal of the cross watchmen
16 from the West 19th Street tracks?

17 A. No.

18 Q. You never consulted with Norfolk Southern in
19 that regard?

20 A. No.

21 Q. Are you aware of any order or any authority that
22 they gained after that decree that we talked
23 about in order to allow them to remove cross
24 watchmen?

25 A. No.

1 city for many, many years and we believe the
2 Norfolk Southern and Conrail merger would result
3 in an option for removing rail traffic from 19th
4 Street other than local services to the
5 industries that require it.

6 What is the serious issue that you
7 were referring to in your letter?

8 A. The city had been trying to get the 19th Street
9 corridor closed for many, many years. Or get
10 the traffic off 19th Street. And again it was
11 like a dam across downtown Erie. And we were
12 trying to push the buttons of the city to get
13 them to support the Norfolk Southern takeover of
14 Conrail.

15 Mike Veshecco was the director of
16 economic development. His concern was economic
17 development in the city.

18 Q. Okay. Now, the next document was produced by
19 Norfolk Southern, that order nisi that we had
20 mentioned earlier.

21 - - - -

22 (The witness reviewed the document.)

23 - - - -

24 BY MR. SOLYMOSI:

25 Q. Would it be correct that this was the document

1 that you were referring to earlier that
2 addressed the removal of the towers and
3 requiring cross watchmen to be in place during
4 school hours?

5 A. That's correct.

6 Q. Okay.

7 MR. SOLYMOSI: We'll mark that order
8 nisi as Exhibit 5

9 - - - -

10 (Deposition Exhibit No. 5 marked for
11 identification.)

12 - - - -

13 BY MR. SOLYMOSI:

14 Q. Okay. I'm going to start to talk to you about
15 some of the documents that I copied from your
16 1997 file that you brought with you today.

17 The first one we'll mark --

18 It's a February 26, 1997 Times news
19 article entitled: Merger could finally derail
20 19th Street tracks.

21 Do you know why this would have been
22 in your file, Harvey?

23 - - - -

24 (The witness reviewed the document.)

25 - - - -

DEPOSITION OF HARVEY H. STONE
ERRATA SHEET
JANUARY 9, 2007

<u>Page/Line</u>	<u>Change From</u>	<u>Change To</u>	<u>Reason for Change</u>
58/25 to 59/1	Yes. There's a copy of that in one of the files.	Yes. I believe there is a copy of that in one of the files.	Correction. I was unable to locate the DEIS in our files.
58/9	Yeah, I can find it.	I believe I can find it.	Correction. I was unable to locate the DEIS in our files.
67/19	Yes.	Yes, this is Norfolk Southern's response.	Clarification

In all other respects, I believe that the transcript is true and correct.



Harvey H. Stone

Dated: February 15, 2007

Tab V
H. Stone Deposition Exhibit 5 (1/9/07)

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

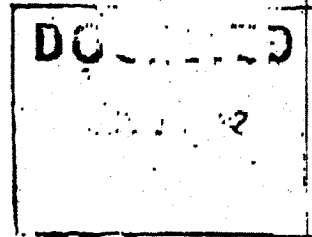
Public Meeting held May 28, 1982

Commissioners Present:

Susan M. Shanahan, Chairman
Michael Johnson
James H. Cowley
Linda C. Talliaferro
Clifford L. Jones

Application of Norfolk and Western Railway Company for approval of (1) the full automation of the existing crossing protection at the crossings, at-grade, where tracks of said company cross Cranberry, Raspberry, Cascade, Elm, Liberty, Poplar, Cherry, Walnut, Chestnut, Myrtle, Sassafras, Peach, Ash, Holland, German and Parade Streets, all in the City of Erie, and (2) the removal of watchmen who control or override the existing protection except that on-ground watchmen will remain at Cranberry, Cascade and Cherry Street Crossings during school hours.

A-00103847



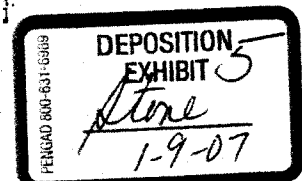
ORDER NISI

BY THE COMMISSION:

At a location in the City of Erie, the tracks of Norfolk and Western Railway Company cross, at-grade, 16 streets.

In its application filed January 6, 1982, Norfolk and Western Railway Company seeks Commission approval to alter the warning facilities at 16 at-grade crossings in the city of Erie. The crossings at Cranberry, Raspberry, Cascade, Elm, Liberty, Poplar, Cherry, Walnut, Chestnut, Myrtle, Sassafras and Peach Streets have automatic flashing light signals activated by DC track circuits. The signals are equipped with manual override systems which allow the signals to be deactivated if a train stops before it reaches the crossings. The manual override for these crossings is performed by a crossing watchman located in towers at Raspberry, Liberty and Sassafras Streets between the hours of 6:30 a.m. and 10:30 p.m.

The crossings at Holland Street and German Street have flashing light warning signals that are manually controlled, on a 24-hour basis, by a crossing watchman from a tower located at Holland Street.



The warning facilities at Parade Street are flashing light warning signals with short-arm gates and are operated by a crossing watchman on a 24-hour basis from a tower located at Parade Street. This watchman also manually overrides the automatic flashing light signals which are located at the Ash Street crossing.

At Cranberry, Cascade and Cherry Streets, a crossing watchman is located on the ground to provide additional warning to school children. These watchmen are on duty eight hours per day during the school year and will not be removed under this application.

According to 1979 Pennsylvania Department of Transportation Railroad Crossing Logs, the 1977 vehicular traffic counts were as follows:

<u>STREET NAME</u>	<u>AVERAGE DAILY TRAFFIC</u>
Cranberry Street	830
Raspberry Street	3500
Cascade Street	1560
Plum Street	570
Liberty Street	13390
Poplar Street	360
Cherry Street	9050
Walnut Street	310
Chestnut Street	1350
Myrtle Street	730
Sassafras Street	10920
Peach Street	10920
Holland Street	2320
German Street	730
Parade Street	15600
Ash Street	5200

The train traffic over these crossings averages approximately five trains per day in each direction. There is one local train that performs switching movements to a lumber company near Cranberry Street approximately two trips per day. Furthermore, there are three to four industries between Peach and Ash Streets that a local train services by making approximately four round trips per day.

Norfolk and Western Railway Company's Exhibit No. 3, attached to the application, shows the proposed changes in the crossing warning devices. At Cranberry, Raspberry, Cascade, Plum, Liberty, Poplar, Cherry, Walnut, Chestnut, Myrtle, Sassafras, Peach and Ash Street crossings, the railroad company proposes to install "motion sensor" units at each of these crossings. The installation of the "motion sensor" units enables the flashing light signals to stop operating if the train stops before reaching a crossing and will automatically activate the flashing light signals if the train starts moving towards the crossing. However, if the train starts backing away from the crossing, the flashing light signal will remain off and if the train has stopped on the crossing, the flashing light signal will remain operating.

At Holland, German and Parade Street crossings, "motion sensor" units will be installed for the main tracks and island circuits will be installed for the side tracks. In addition, the carrier proposes to remove three tracks at Holland Street and one track at German Street which are no longer necessary for railroad operations.

The estimated cost of the project is \$375,300 for the automation of the crossings and \$18,300 for the removal of the watchmen's facilities and the surplus tracks at Holland and German Street. Norfolk and Western Railway Company agrees to bear all costs directly associated with this project including the responsibility for installing and maintaining the proposed crossing warning facilities.

The Norfolk and Western Railway Company avers that the full automation of the 16 at-grade crossings by using modern electronic circuitry will provide a safe, more consistent and more dependable warning to motorists and pedestrians than existing manually controlled warning devices.

The railroad company's Exhibit No. 4 is a copy of a resolution that the City of Erie passed on September 23, 1981 granting Norfolk and Western Railway Company permission, subject to Public Utility Commission approval, to implement the proposed automatic warning facilities as outlined in this application.

We have carefully reviewed the record in this proceeding and are of the opinion that the automation of the warning facilities as specified in the Norfolk and Western Railway Company's application should be installed. The full automation of the warning facilities at the 16 crossings will improve the safety and dependability of the flashing light signals and will eliminate the need for complete reliance on the watchmen's attentiveness to manually control the warning facilities.

Since it appears that the United Transportation Union and the Brotherhood of Maintenance of Way Employees may not have been served with a copy of this application, and due to the urgency of the railroad company to initiate the alteration of the warning facilities, we are of the opinion that an order can be issued *Nisi*.

The record having been certified to this Commission, we issue this order approving this application pursuant to Section 335(a) of the Public Utility Code, 66 Pa. C.S. §335 and find that the alteration of the crossings is necessary and proper for the service, accommodation, convenience or safety of the public; **THEREFORE,**

IT IS ORDERED:

1. That the application be and is hereby approved.
2. That Norfolk and Western Railway Company, at its sole cost and expense, furnish all material and do all work necessary to alter the crossings at Cranberry, Raspberry, Cascade, Plum, Liberty, Poplar,

Cherry, Walnut, Chestnut, Myrtle, Sassafras, Peach and Ash Streets by the installation of "motion sensor" units to provide fully automatic warning facilities at each crossing in lieu of the manual override performed by crossing watchmen in towers located at Raspberry, Liberty, Sassafras and Parade Streets, all in accordance with Exhibit 3 attached to the application, which plan is hereby approved and made part hereof.

3. That Norfolk and Western Railway Company, at its sole cost and expense, furnish all material and do all work necessary to alter the crossings at Holland, German and Parade Streets by the installation of "motion sensor" units for the main tracks and island circuits for the side tracks to provide fully automatic warning facilities at each crossing in lieu of the manually controlled warning facilities which are completely dependent upon crossing watchmen located in towers at Holland and Parade Streets, all in accordance with the approved plans.

4. That Norfolk and Western Railway Company, at its sole cost and expense, furnish all material and do all work necessary to alter the crossing at Holland Street by the removal of the rails, ties and other railroad facilities of three middle tracks at said crossing including the relocation of the flashing light signals in accordance with Part VIII of the Manual Uniform Traffic Control Devices and restore the area of the highway disturbed by the tracks' removal with bituminous concrete or other suitable material conforming with the abutting highway paving, in the City of Erie.

5. That Norfolk and Western Railway Company, at its sole cost and expense, furnish all material and do all work necessary to alter the crossing at German Street by the removal of the rails, ties, and other railroad facilities of a side track including the relocation of the flashing light signals in accordance with Part VIII of the Manual and Uniform Traffic Control Devices and restore the area of highway disturbed by the track removal, with bituminous concrete or other suitable material conforming with the abutting highway paving, in the City of Erie.

6. That Norfolk and Western Railway Company, at its sole cost and expense, furnish all material and do all work necessary to provide on-ground crossing watchmen at Cranberry, Cascade and Cherry Streets for an 8-hour period each day on school days during the school year.

7. That Norfolk and Western Railway Company, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain any detours that may be required to accommodate properly highway traffic during the time the railroad-highway crossings are being altered.

8. That any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any public utility other than Norfolk and Western Railway Company, which may be required as incidental to the alteration of the crossings be made by said public utility at Norfolk and Western Railway Company's expense, and in such manner as will not interfere with the alteration, and such relocated or altered facilities hereinafter be maintained by said public utility.

9. That Norfolk and Western Railway Company pay all compensation for damages, if any due to owners for property taken, injured or destroyed by reason of the alteration in accordance with this order.

10. That Norfolk and Western Railway Company cooperate with City of Erie and Department of Transportation so that during the time work is being performed at said crossings, the vehicular traffic will not be endangered or unnecessarily impeded.

11. That all work necessary to complete the alteration of the crossings be done in a manner satisfactory to this Commission on or before December 31, 1983, that on or before said date, Norfolk and Western Railway Company report to this Commission the date of actual completion of the work.

12. That upon completion of the alteration of the crossings, Norfolk and Western Railway Company, furnish all material and do all work necessary to remove the watchman facilities located at Raspberry, Liberty, Sassafras, Holland and Parade Streets.

13. That upon completion of the alteration of the crossings, Norfolk and Western Railway Company, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its facilities at the subject crossings including the fully automatic warning facilities installed in accordance with this order.

14. That upon completion of the alteration of the crossings, City of Erie, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approaches to the Holland and Gorman Street crossings for the full graded width thereof, including the paving to points 24 inches beyond each outside rail.

15. That unless exceptions are filed with this Commission within 15 days following date of service thereof, this order at Application Docket No. 00103847 and the provisions herein shall remain in full force and effect.

BY THE COMMISSION,


Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: May 15, 1982

ORDER ENTERED: JUN 16 1982

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2007, the foregoing Supplemental Appendix to Motion for Summary Judgment on Behalf of Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company, Inc., was filed electronically with the Clerk of Court using the Electronic Case Filing system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

s/ Roger H. Taft
Roger H. Taft, Esq.